IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.318 OF 2006
IN
NOTICE OF MOTION NO.3569 OF 2004
IN
SUIT NO.3499 OF 2004

M/s.Hede Consultancy Co.
Pvt. Ltd. & Ors. ..Appellants.
(Orig.Plaintiffs)

Vs.

State Bank of India
Commercial & International
Bank Ltd. & Ors. ..Respondents.
(Orig.Defendants)

Mr.P.Janardhanan with Mr.Anurag Gokhale i/b. Mr.C.K.Rajan for the Appellants.

Mr.U.Hangale i/b.M/s.Uttangale & Co. for Respondent No.1.

CORAM: DR.S.RADHAKRISHNAN AND S.J.VAZIFDAR, JJ.

DATED: 25TH JULY, 2006

P.C. :

Heard the learned counsel for the Appellants and the Respondents.

2. By this Appeal, the Appellants are challenging the order dated 2.12.2005 passed by the learned Single Judge declining to grant any interim relief in a suit filed by the Appellants, being Suit No.3499 of 2004.

3. The brief facts are that Respondent No.1 bank had filed a suit against the present Appellants being Suit No.239 of 1992. The said suit came to be finally decreed on 14.3.1997, which is an ex-parte decree. Pursuant to the said decree, when the suit papers were finally transferred to the Debt Recovery Tribunal, Mumbai, the Debt Recovery Tribunal, Mumbai has issued recovery certificate in the year 1998. It appears that the Appellants thereafter had taken out a Notice of Motion to set aside the aforesaid ex-parte decree, which Notice of Motion came to be dismissed by this Court by an order dated 25.4.1998. Thereafter, it appears that the Appellants challenged that order in an Appeal No.289 of 2001. In the said Appeal, it appears that in the Memo of Appeal the Appellants had also raised an issue of nullity as well as fraud as is apparent from the record. The Appellate Court by its order dated 19.3.2002 came to the conclusion that it was not possible to hold that the ex-parte decree dated 14.3.1997 was a nullity and that, in any event, the Appellate Court has already observed that the Appeal against the aforesaid decree dated 14.3.1997 was hopelessly time barred.

4. It appears that the Appellants had also challenged the aforesaid judgment and order of the

Appellate Court dated 19.3.2002 by way of a Special Leave Petition before the Hon'ble Supreme Court, which was also dismissed.

5. It appears that the Appellants also had filed a Writ Petition before this Court being Writ Petition No.1476 of 2004 alleging that the ex-parte decree against the recovery was obtained by fraud and incapable of execution. The Appellants had challenged the order of the Debt Recovery Appellate Tribunal, directing the Appellants to deposit 50% of Rs.1,66,49,301/- within eight weeks. This Court had again declined to interfere.

6. Before the Division Bench, the Appellants had contended, including the ground that the decree was obtained by fraud and incapable of execution. In that behalf, the Division Bench has observed as under:

> "Even if in the appeal memo the ground of fraud was raised, that stands rejected consequent to the dismissal of the appeal for whatsoever reasons. Considering that there is a decree against the Petitioners, it cannot be said or grounds now raised including the plea of fraud that the order suffers from want of jurisdiction or excess of jurisdiction.

7. Under the aforesaid facts and circumstances, we are not going into the question of fraud as the same has already been concluded by two Division Benches of this Court, one by way of Appeal and the other by way of a Writ Petition. The Supreme Court has also declined to interfere.

8. In view of the above, since we are not going into the merits of the matter, we are not considering the two judgments cited by the learned counsel for the Appellant in the case of *United India Insurance Company Limited v. Rajendra Singh & Ors., (2000)3 SCC, 581* and in the case of *S.P. Chengalvaraya Naidu v. Jagannath & Ors., AIR 1994 Supreme Court, 853*.

9. Hence the above Appeal stands dismissed. As we have not gone into the merits of the matter, we are inclined to continue the ad-interim order granted by the learned Single Judge for a further period of eight weeks from today.

(DR.S.RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)